



7555-01

NATIONAL SCIENCE FOUNDATION

Notice of Buy American Waiver under the American Recovery
and Reinvestment Act of 2009

AGENCY: National Science Foundation (NSF).

ACTION: Notice.

SUMMARY: NSF is hereby granting a limited program-specific exemption of section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. No. 111-5, 123 Stat. 115, 303 (2009), for incidental items that comprise, in total, an amount that is no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project funded through the Academic Research Infrastructure Recovery and Reinvestment Program

DATE: [Insert date of publication in the Federal Register]:

ADDRESS: National Science Foundation, 4201 Wilson Blvd.,

Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Clark Baukin,
Division of Grants and Agreements, 703-292-8210

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of the Recovery Act and section 176.80 of Title 2 of the Code of Federal Regulations, the National Science Foundation (NSF) hereby provides notice that on July 20, 2011, the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency on 27 May 2010, granted a de minimis exemption of section 1605 of the Recovery Act (Buy American provision) with respect to incidental items that comprise, in total, an amount that is no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project funded through the Academic Research Infrastructure - Recovery and Reinvestment Program. The basis for this exemption is section 1605(b)(1) of the Recovery Act, in that executing individual exemptions for many of the incidental items used in construction and renovation, such as nuts, bolts, wires, cables, switches, etc. is not in the public interest. The total cost of incidental items requiring use of this limited exemption is

expected to be less than 5% of the total Recovery Act funds awarded under the Academic Research Infrastructure - Recovery and Reinvestment Program or less than \$10,000,000. Award terms and conditions still require awardees to Buy American to the extent practicable for items within the de minimis part of the projects.

I. BACKGROUND

The Recovery Act appropriated \$200 million to NSF for projects being funded by the Foundations Academic Research Infrastructure - Recovery and Reinvestment Program (ARI). This Program funds renovation of infrastructure for research at academic institutions and non-profit research organizations.

Section 1605(a) of the Recovery Act, the Buy American provision, states that none of the funds appropriated by the Act "may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States."

Subsections 1605(b) and (c) of the Recovery Act authorize

the head of a Federal department or agency to waive the Buy American provision if the head of the agency finds that:

(1) applying the provision would be inconsistent with the public interest; (2) the relevant goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent.

If the head of the Federal department or agency waives the Buy American provision, then the head of the department or agency is required to publish a detailed justification in the Federal Register. Finally, section 1605(d) of the Recovery Act states that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

II. FINDING THAT INDIVIDUAL EXEMPTIONS FOR INCIDENTAL ITEMS ARE NOT IN THE PUBLIC INTEREST

Recovery Act projects funded by the Academic Research Infrastructure - Recovery and Reinvestment Program (ARI) typically involve the use of literally thousands of miscellaneous, generally low-cost items that are essential

for, but incidental to, the construction, alteration, maintenance or repair of a public building or public work and are incorporated into the physical structure of the project, such as nuts, bolts, wires, cables, and switches. For many of these incidental items, the country of manufacture and the availability of alternatives are not always readily or reasonably identifiable in the normal course of business. More importantly, the miscellaneous character of these items, together with their low cost (both individually and when procured in bulk), characterize them as incidental to the project.

Requiring individual waivers for incidental items would be time prohibitive and overly burdensome for both awardees and for the National Science Foundation (NSF) in carrying out the Recovery Act. Therefore, a nationwide limited de minimis waiver of incidental items up to a limit of no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project is justified in the public interest.

Issuance of this limited project-specific exemption recognizes NSF's commitment to expeditious expenditure of

Recovery Act dollars, by balancing the need for expeditious and efficient implementation of the Recovery Act while still applying the Buy American provisions for materials that are greater than a de minimis part of the projects.

With a similar purpose, on July 26, 2011, NSF published a de minimis exemption from the Buy American requirement for incidental items in a ship construction project [76 FR 44613].

III. EXEMPTION

On July, 20, 2011, and under the authority of section 1605(b)(1) of the Public Law 111n5 and delegation order dated 27 May 2010, with respect to the Academic Research Infrastructure - Recovery and Reinvestment Program awards funded by NSF, the NSF Chief Financial Officer granted a limited exemption (a waiver under the Recovery Act Buy American provisions) for incidental items that comprise, in total, a de minimis amount of the project; that is, any such incidental items up to a limit of no more than 5

percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project that is funded under the Academic Research Infrastructure - Recovery and Reinvestment Program.

Other Federal agencies have issued similar de minimis exemptions. For example, the Department of Energy issued a de minimis exemption relating to its Office of Energy Efficiency and Renewable Energy [75 FR 35447 (June 22, 2010)].

Dated: November 14, 2011

Lawrence Rudolph,
General Counsel.

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